

Alyse Stoy

To

cc

bcc

Subject UPLOAD F:\West Lake
Landfill\DentonsFOIACHeryleEDocs\RD amend OU2.doc



- RD amend OU2.doc

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 N. 5th STREET
KANSAS CITY, KANSAS 66101

IN THE MATTER OF:

Bridgeton Landfill, LLC,

Docket No. VII-94-F-0025

Respondent

THIRD AMENDMENT TO SETTLEMENT AGREEMENT AND ORDER ON CONSENT

WHEREAS, the United States Environmental Protection Agency, Region VII (EPA) and Laidlaw Waste Systems (Bridgeton), Inc. (Laidlaw or Respondent) collectively referred to as the Parties entered into an Administrative Order on Consent (AOC), docket number VII-94-F-0025, and;

WHEREAS, section XXVII, paragraph 92 of that AOC provides for amendments to the AOC by mutual agreement of the Parties and the Parties have previously amended this AOC; and,

WHEREAS, the Parties wish to amend the AOC.

The AOC is therefore amended as follows:

1. The term Administrative Order on Consent in the original document shall be amended to Administrative Settlement Agreement and Order on Consent.” The Administrative Settlement Agreement and Order on Consent shall also be known as the Settlement Agreement.”

2. Bridgeton Landfill, LLC (Bridgeton) is the successor in interest to Laidlaw Waste

Systems (Bridgeton), Inc. and Bridgeton is substituted as the Respondent in this matter.

3. For purposes of this amendment: "Third Amendment" shall mean this amendment. "Work" shall mean all activities Respondent is required to perform pursuant to the Settlement Agreement, and "RD Work" shall mean all activities Respondent is required to perform pursuant to this Third Amendment. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); or, (3) any solid waste under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

4. Section I. (Introduction), paragraph 1 of the AOC shall be enlarged to include the following: This Settlement Agreement further concerns the preparation of and performance of the design of the Remedial Action as described in the July 25, 2008 Record of Decision (ROD) for the Westlake Landfill Site, Operable Unit 2 and the reimbursement of all costs incurred by EPA in connection with that remedial design.

5. Section IV. (Statement of Purpose), paragraph 6 shall be amended to insert: (d) to perform a design for the Remedial Action as described in the Record of Decision for OU2.

6. The following shall be inserted as new Paragraph 22.(g). in Section VIII (Work to Be Performed):

22.(f). Remedial Design Work Plan and Implementation.

1). Within 60 days after the Effective Date of this Third Amendment, Respondent shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site (Remedial Design Work Plan or RD Work Plan). The RD Work Plan shall provide for design of the remedy set forth in the ROD, in accordance with the SOW and for achievement of the Performance Standards and other requirements set forth in the ROD, this Third Amendment to the Settlement Agreement and/or the SOW. Upon its approval by EPA, the RD Work Plan shall be incorporated into and become enforceable under this Third Amendment to the Settlement Agreement.

2). The RD Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) design sampling and analysis plan (including, but

not limited to, a Remedial Design Quality Assurance Project Plan (RD QAPP) as set forth below in paragraph 8 of this Second Amendment; (2) a preliminary design submittal; (3) an intermediate design submittal, if determined necessary by EPA; and (4) a pre-final/final design submittal. In addition, the RD Work Plan shall include a schedule for completion of the Remedial Action Work Plan.

3). Upon approval of the RD Work Plan by EPA, and after a reasonable opportunity for review and comment by the State, Respondent shall implement the RD Work Plan. Respondent shall submit to EPA and the State for review all plans, submittals, and other deliverables required under the approved RD Work Plan in accordance with the approved schedule. Unless otherwise directed by EPA, Respondent shall not commence further Remedial Design activities at the Site prior to approval of the RD Work Plan.

4). The preliminary design submittal shall include, at a minimum, the following: (1) design criteria; (2) results of additional field sampling; (3) project delivery strategy; (4) preliminary plans, drawings, and sketches; (5) required specifications in outline form; and (6) a preliminary construction schedule.

5). The intermediate design submittal, if required by EPA or if independently submitted by Respondent, shall be a continuation and expansion of the preliminary design. Any value engineering proposals must be identified and evaluated during this review.

6). The pre-final/final design submittal shall include, at a minimum, the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); and (4) Contingency Plan.

7). Respondent shall conduct all Work in accordance with the SOW, the ROD, CERCLA, the NCP, and all applicable EPA guidance. The Project Coordinator shall use his or her best efforts to inform Respondent if new or revised guidances may apply to the Work.

8). Respondent shall perform the tasks and submit the deliverables that the SOW sets forth. EPA will approve, approve with conditions, modify, or disapprove each deliverable that Respondent submits under this Settlement Agreement and the SOW. Each deliverable must include all listed items as well as items that the RD Work Plan indicates Respondent shall prepare and submit to EPA for review and approval.

9). Upon approval by EPA, this Settlement Agreement incorporates any reports, plans, specifications, schedules, and attachments that this Settlement Agreement or the SOW requires. With the exception of extensions that EPA allows in writing or certain provisions within Section XXI of this Settlement Agreement (*Force Majeure*), any non-compliance with such EPA-approved reports, plans, specifications, schedules, and attachments shall be considered a violation of this Settlement Agreement and will subject Respondent to stipulated penalties in accordance with Section XX (Delay in Performance/Stipulated Penalties).

10). If any unanticipated or changed circumstances exist at the Site that may significantly affect the Work or schedule, Respondent shall notify the EPA Project Coordinator by telephone within 24 hours of discovery of such circumstances. Such notification is in addition to any notification required by Section XXI *Force Majeure*).

11). If EPA determines that additional tasks, including, but not limited to, additional investigatory work or engineering evaluation, are necessary to complete the Work, EPA shall notify Respondent in writing. Respondent shall submit a work plan to EPA for the completion of such additional tasks within 30 days of receipt of such notice, or such longer time as EPA agrees. The work plan shall be completed in accordance with the same standards, specifications, and requirements of other deliverables pursuant to this Settlement Agreement. EPA will review and comment on, as well as approve, approve with conditions, modify, or disapprove the work plan. Upon approval or approval with modifications of the work plan, Respondent shall implement the additional work in accordance with the schedule of the approved work plan. Failure to comply with this paragraph, including, but not limited to, failure to submit a satisfactory work plan, shall subject Respondent to stipulated penalties as set forth in Section XX (Delay in Performance/Stipulated Penalties).

7. Section XI. (Quality Assurance) shall be deleted and the following shall be substituted:

XI. Quality Assurance and Sampling.

35.a. Respondent shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with EPA Requirements for Quality Assurance Project Plans (QA/R5) (EPA/240/B-01/003, reissued May 2006) (Guidance for Quality Assurance Project Plans (QA/G-5) (EPA/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by EPA to Respondents of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under

this Third Amendment, Respondent shall submit to EPA for approval, a Quality Assurance Project Plan (QAPP) that is consistent with the SOW, the NCP and applicable guidance documents. Respondent shall ensure that EPA personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Third Amendment. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Respondent shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Third Amendment perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in USEPA Contract Laboratory Program, Statement of Work for Inorganic Analysis, Multi-Media, Multi-Concentration, ILM05.3, dated March, 2004 and the USEPA Contract Laboratory Program, Statement of Work for Organic Analysis, Multi-Media, Multi-Concentration, SOM01.2, dated May, 2005, and any amendments made thereto during the course of the implementation of this Third Amendment; however, upon approval by EPA, the Respondent may use other analytical methods which are as stringent as or more stringent than the CLP- approved methods. Respondent shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Third Amendment participate in an EPA or EPA-equivalent QA/QC program. Respondent shall only use laboratories that have a documented Quality System which complies with ANSI/ASQ E4-2004, Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs, (American National Standard, January 5, 1995), and EPA Requirements for Quality Management Plans (QA/R-2), (EPA/240/B-01/002, reissued May 2006) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Third Amendment will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

b. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than 30 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon

request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

c. Respondent shall summarize and submit to EPA two (2) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the RD in the monthly progress reports required by the SOW, unless EPA agrees otherwise. Respondent shall maintain custody of all information and data that the Final

Remedial Design Report and any deliverable relied upon or referenced. Upon EPA's request, Respondent shall provide such information and data to EPA.

d. If at any time during the Remedial Design process, Respondent becomes aware of the need for additional data beyond the scope of the approved Work Plans, Respondent shall have an affirmative obligation to submit to EPA's Project Coordinator, within 20 days, a memorandum documenting the need for additional data.

8. The following shall be inserted after paragraph 52 in Section XVI (Project Coordinators):

52.1. Emergency Response and Notification of Releases.

a. In the event of any action or occurrence during performance of the Work, which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release and shall immediately notify the EPA Project Coordinator, or, in the event of his/her unavailability, the EPA Region VII Spill Report line at 913-281-0991. Respondent shall take such actions in consultation with EPA's Project Coordinator, or other available authorized EPA officer, and in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not

inconsistent with the NCP, pursuant to Section XXII (Reimbursement of Response and Oversight Costs).

b. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken, or to be taken, to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

9. Section XX (Delay in Performance/Stipulated Penalties) shall be amended as follows:

a. Paragraph 60 by adding the following deliverable items: RD Work Plan, design sampling and analysis plan, RD QAPP, preliminary design submittal, intermediate design submittal (if determined necessary by EPA), pre-final/final design submittal.

b. Paragraph 81 by deleting the last sentence and adding the following:

All payments to EPA under this Section shall be paid by official bank check or checks made payable to [↑]EPA Hazardous Substances Superfund,^{↑↑} shall be sent to U.S. Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, PO Box 979077, St. Louis, MO 63197-9000, and shall indicate that the payment is for stipulated penalties, and shall reference EPA Region VII and Site/Spill ID Number 07/14, OU2, EPA Docket Number VII-94-F-0025, and the name and address of the party/parties making payment. At the time of any payment required by this paragraph, Respondent shall send notice that payment has been made to the Region 7 Financial Management Office, 901 N. 5th Street, Kansas City, Kansas 66101.

10. Section XXII (Reimbursement of Response and Oversight Costs), paragraph 91, shall be substituted as follows:

All payments to EPA under this Section shall be paid by official bank check or checks made payable to [↑]EPA Hazardous Substances Superfund,^{↑↑} and shall be sent to U.S. EPA,

Cincinnati Finance Center, Superfund Payments, PO Box 979076, St. Louis, MO 63197-9000 . The payment shall reference EPA Region VII and Site/Spill ID Number 07/14, OU2, EPA Docket Number VII-94-F-0025, the name and address of the party/parties making payment. At the time of any payment required by this paragraph, Respondent shall send notice that payment has been made to the Region 7 Financial Management Office, 901 N. 5th Street, Kansas City, Kansas 66101.

11. The following section shall be added to the Settlement Agreement as Section XXIX:

XXIX. COVENANT BY EPA.

96. In consideration of the actions that Respondent will perform and the payments that Respondent will make under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) for the Work and for Response Costs, including oversight costs, paid under this Settlement Agreement. This covenant not to sue shall take effect upon the Effective Date of this amendment and is conditioned upon Respondent's complete and satisfactory performance of all obligations under this Settlement Agreement. This covenant not to sue extends only to Respondent and does not extend to any other person.

12. The following section shall be added to the settlement agreement as Section XXX:

XXX. CONTRIBUTION.

97. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2) and that Respondent is entitled to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and the Response Costs, including oversight costs.

13. The following section shall be added to the Settlement Agreement as Section XXXI:

XXXI. COVENANT NOT TO SUE BY RESPONDENT

98. Covenant Not to Sue by Respondent: Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Work and Response Costs, including oversight costs, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substances Superfund established by 26 U.S.C. § 9507, based on Section 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law.

b. any claim arising out of response actions at, or in connection with, the Site, including any claim under the United States constitution the Tucker Act, 28 U.S.C. 28 § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Section 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work or payment of Response Costs, including oversight costs.

14. EFFECTIVE DATE: This Third Amendment shall become effective upon signature by EPA. EPA will advise Respondent when EPA has signed.

For the United States Environmental Protection Agency:

Date

Cecilia Tapia, Director
Superfund Division, Region 7

Cheryle Micinski
Associate Regional Counsel

For Bridgeton Landfill, LLC:

Amendment for Remedial Design
Docket No. VII-94-F-0025

Date